

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT -5 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2012-0077
)	DEPARTMENT B
IN RE MARIO P. C.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JV18881301

Honorable K.C. Stanford, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Kara Crosby

Tucson
Attorneys for State

Lori J. Lefferts, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Minor

V Á S Q U E Z, Presiding Judge.

¶1 The minor, Mario P. C., was charged by delinquency petition with possession of a prescription-only drug for sale in a drug-free school zone. After an adjudication hearing, the juvenile court adjudicated Mario delinquent. The court placed him on a six-month term of probation and this appeal followed.

¶2 Mario argues the evidence was insufficient to support his conviction because no “definitive chemical testing” was done on the pills seized from him. “In reviewing the sufficiency of the evidence, we examine the evidence in the light most favorable to sustaining the judgment, and we consider whether the evidence sufficed to permit a rational trier of fact to find the essential elements of the offense beyond a reasonable doubt.” *In re Dayvid S.*, 199 Ariz. 169, ¶ 4, 15 P.3d 771, 772 (App. 2000).

¶3 To sustain Mario’s adjudication of guilt, the state was not required to prove by chemical analysis that the substance possessed was a prescription drug; instead, the identity of the substance could be proven by circumstantial evidence. *See State v. Jonas*, 162 Ariz. 32, 34, 780 P.2d 1080, 1082 (App. 1988), (“That a substance is an illicit drug can be proved by circumstantial evidence.”), *aff’d as modified*, 164 Ariz. 242, 792 P.2d 705 (1990); *cf. State v. Nightwine*, 137 Ariz. 499, 503, 671 P.2d 1289, 1293 (App. 1983) (circumstantial evidence, including price and lack of complaint by user that substance was not cocaine, sufficient to establish powder was cocaine); *cf. also State v. Saez*, 173 Ariz. 624, 629-30, 845 P.2d 1119, 1124-25 (App. 1992) (finding sufficient evidence to establish substance as cocaine by testimony of drug’s appearance, narcotic effect, and purchase price); *State v. Ampey*, 125 Ariz. 281, 282, 609 P.2d 96, 97 (App. 1980)

(concluding sufficient evidence of marijuana presented through officer's report and defendant's admission). Here the state presented expert testimony from its criminalist that he had compared the imprints on the pills seized from Mario to "a Drug [Identification] Bible," used to identify legal and illegal drugs. Using that process, he determined the pills were prescription products.

¶4 Mario, however, argues that the criminalist should have been required to perform chemical analysis of the pills because a heightened laboratory standard, which he asserts will be required of forensic laboratories in 2014, would require chemical analysis. At the adjudication hearing, Mario questioned the criminalist about what certification his laboratory currently had, and the existence of a higher standard for certification. However, he did not establish what the future standard would require in relation to prescription drug testing. Indeed, although Mario discusses this new standard in his opening brief, he does not cite anything in the record below to show that this information was presented to the juvenile court. And the criminalist testified that under his existing laboratory standards, if a substance is not controlled, chemical analysis is not required.

¶5 Although the criminalist admitted prescription pills can be counterfeited and it was possible the pills in question could have been, nothing in the record before us suggests the pills in question were counterfeit; rather, the only evidence about their chemical composition was the criminalist's positive identification of the pills as prescription products. *Cf. State v. Jones*, 197 Ariz. 290, ¶¶ 57-58, 4 P.3d 345, 365 (2000) (concluding one witness's uncontroverted testimony sufficient to establish defendant

committed offense while on parole). That prescription pills can be counterfeited and that better possible testing methods exist ultimately go to the weight the trier of fact might give the criminalist's testimony. And this court will not reweigh the evidence presented. *State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003). The evidence presented here was more than a "mere scintilla," *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d 391, 394 (App. 2000), and, viewed in the light most favorable to sustaining the adjudication, was sufficient, *In re Dayvid S.*, 199 Ariz. 169, ¶ 4, 15 P.3d at 772. Therefore, Mario's adjudication and disposition are affirmed.

/s/ *Garye L. Vásquez*

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ *Philip G. Espinosa*

PHILIP G. ESPINOSA, Judge

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Judge